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No. 86-45

In The
Supreme Court of the United States
October Term, 1986

PEOPLE OF THE STATE OF ILLINOIS, ex rel. RONALD EPPINGA,

Petitioner,

v.

JIM EDGAR, SECRETARY OF STATE, STATE OF ILLINOIS,

Respondent.

REPLY BRIEF PURSUANT TO RULE 22.5 OF THE RULES OF THIS COURT

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1. ARGUMENT.

The Attorney General of the State of Illinois in the Brief in Opposition on behalf of the Secretary of State of Illinois has advanced for the first time in any court the contention that the instant case is moot as an argument supporting

the denial of the Writ of Certiorari we seek.[1] The Brief in Opposition advanced the mootness argument on the basis of concededly erroneous facts. Entirely appropriately, Counsel has indicated to the Court by letter of October 2, 1986 that Respondent's order revoking Petitioner's driver's license effective February 15, 1985, was not rescinded in April of 1985 at all. It was, however, rescinded on May 19, 1986, as a result of the disposition of the drunken driving charges against Petitioner on May 12, 1986, without a criminal conviction. The Attorney General's most recent statement of the facts is accurate. On those facts, we urge on behalf of Petitioner that the case is not moot. The controversy between Petitioner and the Secretary of State remains a meaningful one and the relief we seek ultimately in this litigation remains of significance to Petitioner.

The collateral consequences of license revocation are substantial in themselves. The effect, for instance, of the revocation even though later rescinded, upon Petitioner's automobile liability insurance premiums is a direct pecuniary detriment to him traceable to the denial of due process which, we have argued, occurred in this case.[2] The subsequent use of the record of the revocation involved in this litigation is also a substantial possibility. Can anyone doubt that the appearance

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[1] Our Petition for Certiorari was filed July 14, 1986. The Attorney General, for Respondent, took no action until this Court, by letter of the Clerk dated August 28, 1986, requested the filing of a response by September 27, 1986.

[2] It should not escape notice that the fact that Respondent rescinded the revocation of Petitioner's license fifteen months after his initial order has some bearing upon the due process arguments concerning risk of error. See Pet. 7-9; Brf. in Opp. 9. Respondent seeks to revoke drivers' licenses, summarily without notice or hearing, based on police reports from which he anticipates results in criminal proceedings. Those results simply did not in this case, and do not in many others, come to pass. A revocation which has to be later rescinded on that ground was erroneously ordered in the first place.

of a revocation of this type, whether rescinded or not, in the prior history of Petitioner would serve to aggravate any future difficulties in which he may be involved however minor they might otherwise appear? We respectfully submit that the instant case is not moot, that Petitioner still maintains an interest in the relief he initially sought, and that a justiciable controversy still exist between the parties.

We must, however, extend the analysis one more step. Respondent asserts mootness to support the denial of our petition. If *arguendo,* the case is indeed moot, we suggest that the proper disposition is not the denial of our petition but instead a summary remand to the Supreme Court of Illinois with instructions to vacate its existing judgment and dismiss the cause as moot. *Murphy v. Hunt,* 455 U.S. 478; *Simon v. Eastern Kentucky Welfare Rights Org.,* 436 U.S. 26; *Weinstein v. Bradford,* 423 U.S. 147. See *O'Shea v. Littleton,* 414 U.S. 488.

2. CONCLUSION.

For the reasons discussed above, we respectfully submit that the instant case is not moot and we ask the Court to consider our due process claim on the basis of our original Petition for Writ of Certiorari and that section of the Brief in Opposition of Respondents directed to the due process issue. Alternatively, we respectfully suggest that if this Court were to determine that our case is moot, a remand to the Supreme Court of Illinois with instructions to vacate its judgment and dismiss the cause as moot is proper.

Respectfully submitted,

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